IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4538 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HUSSAIN @ KALIO NOORMIYAN SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4538 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR SS PAGEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/12/2001

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 9/5/2001 passed by the Police Commissioner, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterized as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the three criminal cases registered against the detenu under the Indian Penal Code and Bombay Police Act. The learned advocate for the petitioner - detenu has further submitted that the last offence is registered on 14/3/2001 before the Maninagar Police Station vide CR No.88 of 2000 for the offence punishable under Sections 143, 147, 148, 149, 324 of Indian Penal Code and under Sec.135 of Bombay Police Act. The detaining authority has passed the detention order on 9/5/2001. Thus, there is a delay of more than one and half months in passing the detention order. No affidavit explaining the delay has been filed either by the detaining authority or by the State. The learned advocate for the petitioner has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a

ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that the last offence is registered against the detenu on 14/3/2001 and the order of detention has been passed on 9/5/2001 and hence, there is a delay of more than one and half months in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 9/5/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Hussain alias Kaliyo Nurmiyan Sheikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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